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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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MARBLE E. BURCH,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record.

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Upon Appeal from the United States District Court for  
the Northern District of California,  
Northern Division.

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**FILED**

JAN 2 - 1931

PAUL P. O'BRIEN,  
CLERK



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Circuit Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD.

Attorneys for Appellant:

HUSTON, HUSTON & HUSTON, Esqs.;  
PERCY NAPTON, Esq., Woodland, Calif.

Attorneys for Appellee:

GEO. J. HATFIELD, Esq., U. S. Attorney;  
ALBERT E. SHEETS, Esq., Assistant  
U. S. Attorney.

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In the Northern Division of the United States  
District Court for the Northern District of  
California, Second Division.

IN EQUITY—No. —.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARBLE E. BURCH,

Defendant.

BILL OF COMPLAINT.

To the Honorable, the Judge of the District Court  
of the United States Within and for the North-  
ern District of California, Second Division.

The United States of America, by Geo. J. Hat-  
field, United States Attorney for the Northern Dis-  
trict of California, complains against Marble E.  
Burch, and for cause of action alleges:

## I.

That Marble E. Burch is a resident of Lassen County, California, in the Northern District of California.

## II.

That the United States is now and has been at all times herein mentioned the owner of all of the Government lands embraced in Township 30 N., Range 7 E., M. D. M., and more particularly of Section 2 in said township and range as delineated and described on the plat of survey officially approved by the General Land Office and the Department of the Interior, all situated within the exterior boundaries of the Lassen National Forest in Lassen County, State and Northern District of California.

## III.

That under the authority conferred by the Acts of Congress approved March 3, 1891 (26 Stats. 1103), and June 4, 1897, (30 Stat. 35), the above-described lands were on or about the year 1902 withdrawn as the Lassen Peak and Diamond Mountain Forest Reserves and were in the year 1907 included within the Lassen Peak National Forest and [1\*] later within the Lassen National Forest and they are now and have been at all times herein mentioned a part and parcel of said Lassen National Forest.

## IV.

That under the authority conferred by the Acts

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\*Page-number appearing at the foot of page of original certified Transcript of Record.



of Congress of June 4, 1897 (30 Stat. 35), Feb. 1, 1905 (33 Stat. 628), of Nov. 9, 1921 (42 Stat. 212), and of January 18, 1927 (Public No. 552), the plaintiff and Secretary of Agriculture through the District Forester of the Forest Service, United States Department of Agriculture, propose and intend to build a road through the above-described Section 2, Township 30 N., Range 7 E., M. D. M., on the east side of Silver Lake between the east bank or shore line of said Lake which is located in Section 2 and the east section line of said Section 2.

#### V.

That the said defendant without permit or authority from the plaintiff or the Secretary of Agriculture or the District Forester and without right has erected a fence upon and across the public domain lying between said east section line of said Section 2 and the east bank or shore line of said Silver Lake, more particularly within Lot 1 of said Section 2, and said defendant has refused and neglected to remove said fence although requested to do so in order that said road might be constructed; that the erection of said fence by the defendant has been and now is obstructing and preventing the construction of the contemplated road above mentioned and said road cannot be constructed unless said fence is removed.

#### VI.

That the plaintiff and its agents are desirous of immediately constructing said road since it is neces-

sary for the proper administration of the Lassen National Forest.

WHEREAS the plaintiff is without adequate remedy save in a Court of Equity it prays that this Honorable Court grant a [2] writ of injunction directed to said defendant ordering him to take down and remove said fence or any other obstruction or improvement now existing on the above-described lands of the plaintiff within the Lassen National Forest and restrain said defendant, his attorneys, agents and servants from, in any manner, hindering, obstructing or interfering with the construction and completion of a road on and over the above-described lands of the plaintiff in Lot 1, Section 2, Township 30 N., Range 7 E., M. D. M.

That said defendant may make a full, true, direct and perfect answer to the matters hereinbefore stated and charged but not under oath, and answer under oath being hereby expressly waived.

That such further relief in the premises be granted as equity may require and that this Honorable Court may seem meet.

GEO. J. HATFIELD,  
United States Attorney,  
ALBERT E. SHEETS,  
Assistant United States Attorney.

[Endorsed]: Filed Sep. 27, 1927. [3]

[Title of Court and Cause.]

ANSWER TO BILL OF COMPLAINT.

Comes now Marble E. Burch and answering the bill of complaint in the above-entitled suit admits, denies and avers as follows:

I.

Admits each and all the allegations of Paragraph I, II and III.

II.

Answering Paragraph IV of the complaint defendant denies that under the authority conferred by the Acts of Congress of June 5, 1897 (30 Stat. 35), Feb. 1, 1905 (33 Stat. 628), of Nov. 9, 1921 (42 Stat. 212), and of January 18, 1927 (Public No. 552), the plaintiff and Secretary of Agriculture through the District Forester of the Forest Service, United States Department of Agriculture, propose or intend to build a road through the above-described Section Two (2), Township Thirty (30), N., Range Seven (7) E., M. D. M., on the east side of Silver Lake between the east bank or shore line of said Section Two (2), but in this connection the defendant avers that the road so proposed to be built and intended to be built by the plaintiff and Secretary of Agriculture through the District Forester of the Forest Service United States Department of Agriculture will run through and be constructed over Section One (1), Township Thirty

(30) N., Range Seven (7) E., M. D. M., the land of the defendant herein. [4]

Further answering said Paragraph IV the defendant avers that at all times mentioned in the bill of complaint and for a long time prior hitherto was and now is the owner of and in possession of the following described land, situate in the County of Lassen, State of California and bounded and described as follows to wit:

Lots 3 and 4 and S.1/2 of NW.1/4 of Section 1, in Township 30 North, Range 7 East, M. D. M. containing 159.22 acres.

and which said land of the defendant at the times mentioned in the complaint or at any other time or at all comprised a part or parcel of the land or lands or of any lands withdrawn as the Lassen Peak and Diamond Mountain Forest Reserve or any other reserve or at all.

Further answering Paragraph IV the defendant denies that his said land or any part, parcel or portion thereof was or now is at the times mentioned in the complaint or at any other time or at all included within the limits or boundaries or the Lassen Peak National Forest or the Lassen National Forest or any other National Forest or National Forest Reserve or at all.

### III.

Answering Paragraph V the defendant denies that at the times mentioned in the complaint or at any other time or at all he has erected a fence upon or across the public domain of the United States of

America or upon or across any land or Forest Reserve of the United States or upon or across any National Reserve or at all.

Further answering Paragraph V the defendant denies that he has erected a fence upon or across the public domain of the United States of America or upon the domain or preserve of the Lassen Peak and Diamond Mountain Forest Reserve or upon or across the Lassen Peak National Forest or any other National Forest or at all lying between said East section line of said [5] Section 2, or the east bank or shore line of said Silver Lake within Lot One (1) thereof mentioned in the complaint, or upon or over any other part of portion of Section Two (2), Township Thirty (30) N., Range Seven (7) E., M. D. M., but in this connection the defendant avers that he has constructed and maintained a fence along and upon the west line of Section One (1), and which said Section One (1), Township Thirty (30) N., Range Seven (7) E., M. D. M., at all times mentioned in the complaint and for a long time prior to was and now is the land of the defendant.

Further answering Paragraph V the defendant denies that the erection of said fence or any other fence or at all by the defendant at the times mentioned in complaint or at any other time or at all has or now is obstructing or preventing the construction of a road in Section Two (2), Township Thirty (30) N., Range Seven (7) East, M. D. M., or in Lassen Peak and Diamond Mountain Forest

Reserves or Lassen Peak National Forest or Lassen National Forrest, or any other Reserve or at All.

Further answering Paragraph V defendant denies that the proposed road mentioned in the complaint cannot be constructed unless defendant's fence is removed.

#### IV.

As to whether the plaintiff or his agents are desirous or otherwise or at all of immediately constructing said road or at any other time or at all that it is necessary to construct said road for the proper administration of the Lassen National Forest, or for any other purpose or at all, the defendant has no knowledge, information or belief, sufficient to enable him to answer the allegations thereof, and therefore and upon that ground denies the same. [6]

For a cross bill of complaint, the defendant avers:

#### I.

That the defendant is now and for a long time hitherto has been the owner and in possession of that certain piece or parcel of land situated, lying and being in the County of Lassen, State of California, and described as follows, to wit:

Lots 3 and 4 and S.1/2 of NW.1/4 of Section 1 in Township 30 North, Range 7 East, M. D. M., containing 159.22 acres.

#### II.

That the plaintiff herein claims an estate or interest therein adverse to the said plaintiff.

III.

That the claim of the said plaintiff is without any right whatever and that the said plaintiff has not any estate right, title or interest whatever in the above-mentioned land, or any part thereof.

WHEREFORE the defendant prays:

1. That the plaintiff may be required to set forth the nature of its claim and that all adverse claims of the plaintiff may be determined by decree of this Court.

2. That by said decree it be declared and adjudged that the plaintiff has no estate or interest whatever in or to said land and premises and that the defendant's title is good and valid.

3. That the plaintiff be forever enjoined and debarred from asserting any claim whatever in or to the above-mentioned land and premises adverse to the defendant and for such other relief as to this Honorable Court shall seem meet and agreeable to equity and for his costs.

HUSTON, HUSTON and HUSTON,  
Attorneys for Defendant. [7]

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[Title of Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL.

State of California,  
County of Yolo,—ss.

Leta Curson, being first duly sworn, deposes and says:

That affiant at all the times herein mentioned was and is a citizen of the United States, residing in the City of Woodland, County of Yolo, State of California, over the age of twenty-one years, not a party to nor *interest* in the above *the above* entitled action, and competent to be a witness upon the hearing of any proceedings therein; that she is, and was at all the times herein mentioned, a clerk in the office of Huston, Huston & Huston, attorneys at law; that the said Huston, Huston & Huston are the attorneys for the defendant in the above-entitled action; that at all the times herein mentioned they resided and had their offices at the City of Woodland, County of Yolo, State of California; that Geo. J. Hatfield is the attorney of record for the above-named plaintiff in said action, and that the said Geo. J. Hatfield at all the times herein mentioned had his office in the Federal Building in the City of Sacramento, County of Sacramento, State of California; that at all the times herein mentioned in each of said two places there is a United States postoffice and between said two places there is a regular daily communication [8] by mail; that on the 16th day of November, 1927, affiant Leta Curson, acting for and under the direction of Huston, Huston & Huston, attorneys for said defendant as aforesaid, served a true copy of the annexed answer to bill of complaint herein on the said Geo. J. Hatfield, the attorney for the said plaintiff, by depositing such copy of said answer to bill of complaint on said date in the post-office at the City of Woodland, and the said county of Yolo, State of California, property



enclosed in a sealed envelope, addressed to the said Geo. J. Hatfield, United States Attorney, Federal Building, Sacramento, California.

LETA CURSON.

Subscribed and sworn to before me this 16th day of November, 1927.

[Seal]                   ARTHUR C. HUSTON, Jr.,  
Notary Public in and for the County of Yolo, State  
of California.

[Endorsed]: Filed Nov. 17, 1927. [9]

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At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City of Sacramento, on Thursday, the 17th day of May, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable A. F. ST. SURE, District Judge.

[Title of Cause.]

MINUTES OF COURT—MAY 17, 1928—TRIAL.

This case came on regularly this day for trial. A. E. Sheets and E. R. Bonsall, Esqrs., Asst. U. S. Attorneys, and H. P. Dechant, Esq., appearing on behalf of the plaintiff and Percy Napton and Robt. W. Huston, Esqrs., appearing on behalf of the defendant. W. G. Durbin and John C. Ing were sworn and testified on behalf of the plaintiff, and

plaintiff introduced in evidence its exhibits marked Nos. 1 and 2, and the plaintiff rested. The defendant moved for a decree in its favor, which motion was denied and to which ruling the defendant excepted. Marble E. Burch, Arthur Bradt were sworn and testified on behalf of defendant and defendant introduced in evidence his Exhibits marked "A," "B," and "C." The evidence being closed, the case was submitted on briefs to be filed in 20 days and 5 days. [10]

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[Title of Court and Cause.]

#### SPECIAL FINDINGS OF FACTS.

This cause having come on regularly to be heard, the complainant appearing by its solicitor, Edgar R. Bonsall, Esquire, Assistant United States Attorney, and the defendant appearing by and through his solicitors, Messrs. Huston & Huston of Woodland, California; and evidence, oral and documentary, having been introduced by the respective parties and the cause having been submitted to the Court for decision, and the Court having duly considered the pleadings and the evidence, finds the following facts:

1. That the complainant, the United States of America, is the owner and in possession of all of Section 2, Township 30 North, Range 7 East, M. D. M., as such section is delineated and described on the official plat of survey of said Township and Range, approved by the United States Surveyor

General for California on July 11, 1883, and on file in the United States Land Office at Sacramento, California.

2. That the defendant, Marble E. Burch, is a resident of Lassen County within the State and Northern District of California, and is the owner and in possession of the NW.¼ of Section 1, Township 30 North, Range 7 East, M. D. M., as delineated on said official plat.

3. That Township 30 North, Range 7 East, M. D. M., was on or about the year 1902 withdrawn for forest purposes and has been and now is included within the boundaries of the Lassen National Forest. [11]

4. That the Secretary of Agriculture by and through his agents, the District Forester and the Forest Supervisor of the Lassen National Forest, is about to build a road in Lot 1 of said Section 2, Township 30 North, Range 7 East, M. D. M., between the east shore line of Silver Lake and the east section line of said Section 2 as delineated on the aforesaid official plat.

5. That the defendant, Marble E. Burch, has erected a fence and other improvements upon the Government land in Lot 1 of Section 2, Township 30 West, Range 7 East, M. D. M., between the east shore line of Silver Lake and the east section line of said Section 2, without permit or other authority from the complainant and has been and is now interfering with the construction of the aforesaid road.

6. That the land of the defendant in the NW.¼ of Section 1, Township 30 North, Range 7 East, M. D. M., does not touch the shore line or embrace any portion of Silver Lake.

7. That the position of the section line between Sections 1 and 2, Township 30 North, Range 7 East, M. D. M., is as shown on the official plat of survey of said Township and Range approved July 11, 1883, on file in the United States Land Office at Sacramento, California, a copy of said plat being a part of the evidence in this cause.

A. F. ST. SURE,  
United States District Judge.

[Endorsed]: Service of copy of within special findings of fact admitted this 3d day of October, 1928.

HUSTON, HUSTON & HUSTON.

[Endorsed]: Lodged Oct. 9, 1929.

Filed Oct. 25, 1929. [12]

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[Title of Court and Cause.]

### EXCEPTION TO SPECIAL FINDINGS OF FACT AND PROPOSED FINDINGS.

Now comes the defendant in the above-entitled action and excepts to the special findings of fact proposed by the plaintiff herein in that said findings of fact are not supported by any evidence and are contrary to law.

Defendant proposes the following special findings of fact and asks the Court to adopt, sign and file the same.

1. It is not true that the said defendant without permit or authority from the plaintiff, or the Secretary of Agriculture, or the District Forester, or without right or otherwise, or at all, has erected a fence upon and across the public domain described in paragraph V of said complaint, or otherwise, or at all, or that he has refused or neglected to remove any fence erected on the public domain, but on the contrary the said fence referred to in said complaint is erected upon the lands of the said defendant; that said fence erected by said defendant on his own land does not now and never did obstruct or prevent the construction of any contemplated road over the public domain.

2. That at the time of the filing of the complaint, and at all times mentioned in the complaint and for a long time prior thereto, the defendant was and is the owner of, in possession of and entitled [13] to the possession of Lots three (3) and four (4) and the South one-half ( $\#1/2$ ) of the Northwest one-quarter ( $NW.1/4$ ) of Section One (1), Township Thirty (30) North, Range Seven (7) East, M. D. M., and that the West and North boundaries of defendant's land embraces a portion of Silver Lake in the manner hereinafter mentioned, and in accordance with and in conformity to an official plat or survey of said township and range approved July, 1883, on file in the United States Land Office at Sacramento, California, and in accordance with

and in conformity to the field-notes of the original survey made by George Sandow, Public Surveyor, and which said field-notes are now on file in the office of the Public Survey at San Francisco, California, viz.: beginning at the Southwest corner of Section One, Township Thirty North, Range Seven East, M. D. M., and thence running North on true line between Sections One (1) and Two (2), variation  $18^{\circ} 20'$  at 23.00 chains. A small lake bears West 3 chains distant at 40.00 chains. Set a volcanic stone 16x7x6 inches marked one-quarter on W. face, ten inches deep for one-quarter section corner from which bears

Larch 12 ins. dia. N.  $82^{\circ}$  E. 57 lks.

Larch 11 ins. Dis. N.  $32^{\circ}$  W. 52 lks.

Both marked  $\frac{1}{4}$  S. B. T.

78.85 chains intersect 6th Standard N. 21.15 chs. S.  $87^{\circ} 47'$  W. of corner to secs. 35, 36 T. 31 N. and set volcanic stone 15x14x8 ins. with 1 notch to E. and 5 to W. and marked C.C. on S., 10 ins. deep for closing corner to secs. 1, 2.

3. It is not true that the lands enclosed by said fence and belonging to the said defendant have been, or are now included within the boundaries of the Lassen National Forest, or any part thereof.

4. It is not true that defendant has erected a fence or any other improvements upon the Government land in Lot One (1) of Section [14] Two (2), Township Thirty (30) North, Range Seven (7) East, M. D. M., between the East shore line of Silver Lake, and the East Section line of Section Two (2), without permit or authority from plaintiff, or other-

wise or at all; it is not true that defendant has been or is now interfering with the construction of the road referred to in said complaint.

5. It is true that the land of the defendant in the Northwest one-quarter of Section One (1), Township Thirty (30) North, Range Seven (7) East, M. D. M., does touch the shore line and embrace a portion of Silver Lake; that the said fence heretofore constructed and now existing along the shore line of said Silver Lake by said defendant was and is the true boundary line between the lands of the said defendant and the plaintiff.

6. That all of the lands now in the possession of said defendant and inclosed by said fence is owned by and is in the possession of said defendant and is not a part of the public domain and the said plaintiff has no right, title or interest therein.

## CONCLUSIONS OF LAW.

The Court deduces the following conclusions of law from the foregoing findings of fact:

### I.

That the plaintiff is entitled to take nothing by said complaint, and defendant is entitled to recover his costs herein.

### II.

That the defendant was at the time of the filing of this complaint, and for a long time prior thereto and now is the owner of and in possession of the real property hereinbefore described.

Dated: \_\_\_\_\_, 1928.

\_\_\_\_\_,  
Judge.

Exceptions overruled. Proposed findings dis-  
allowed.

A. F. ST. SURE,  
D. J.

Service of the within exception, etc., by copy ad-  
mitted this 8th day [15] of Oct., 1928.

ALBERT E. SHEETS,  
Attorney for Pltff.

[Endorsed]: Lodged Oct. 8, 1928.

Filed Oct. 25, 1928. [16]

\_\_\_\_\_  
[Title of Court and Cause.]

### NOTICE OF MOTION AND MOTION.

To the Plaintiff Above Named and to Its Attorneys,  
GEORGE A. HATFIELD and ALBERT E.  
SHEETS.

You and each of you will please take notice that  
at the courtroom of the above-mentioned court in  
the Federal Building, Sacramento, California, on  
Monday, the 15th day of October, 1928, at the hour  
of ten o'clock A. M., or as soon thereafter as coun-  
sel may be heard, the defendant will move the  
Court to adopt, sign and file special findings of fact  
in lieu of the special findings heretofore made, a  
copy of which proposed special findings on the part



of the defendant having been heretofore served upon you.

Said motion will be made on the ground that the special findings of fact heretofore made are not supported by the evidence and are contrary to law. Said motion will be based upon the records, papers and files and upon the proposed special findings aforesaid.

HUSTON, HUSTON & HUSTON,  
Attorneys for Defendant.

Service of the within notice, etc., by copy admitted this 8th day of October, 1928.

ALBERT E. SHEETS,  
Attorney for Plaintiff.

[Endorsed]: Filed Oct. 8, 1928. [17]

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In the Northern Division of the United States  
District Court for the Northern District of  
California.

IN EQUITY—No. 253.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARBLE E. BURCH,

Defendant.

DECREE.

This cause coming on regularly to be heard at this term, on the 17th day of May, 1928, the com-

plainant appearing by its solicitors Geo. J. Hatfield, United States Attorney, Albert E. Sheets, Esquire, and Edgar R. Bonsall, Esquire, Assistant United States Attorneys, and the defendant appearing by and through his solicitors, Messrs. Huston, Huston and Huston, Woodland, California, and testimony having been introduced and proofs offered by the complainant and by the defendant, arguments heard and points and authorities filed and the cause submitted to the Court for its consideration and decision and the same having been duly considered, and special findings of fact having been duly engrossed and filed,—

Now, therefore, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

I.

That the plaintiff is entitled to the possession, occupancy and ownership of the land described in the bill of complaint situate in Section 2, Township 30 North, Range 7 East, M. D. M., as such section is delineated and described on the official plat of survey of said Township and Range, approved by the United States Surveyor-general for California, on July 11, 1883, and on file in the United States Land Office at Sacramento, California, and more particularly the land situate in Lot 1 of said Section 2, between the east section line of said Section and the shore line of Silver Lake as delineated on said official plat. [18]

II.

That the defendant is without any estate, right,

title or interest in the land above described in Section 2, Township 30 North, Range 7 East, M. D. M., and he is hereby forever enjoined and debarred from asserting any claim whatever in or to the above-mentioned land adverse to plaintiff.

III.

That the defendant be, and is hereby enjoined from maintaining the fence mentioned in the bill of complaint or any other obstruction or improvement now existing on said land of the plaintiff, and that said defendant, his attorney, agents or servants be, and hereby are enjoined from in any manner obstructing or interfering with the construction and completion of a road on and over the plaintiff's lands described in the bill of complaint and said injunction be and the same hereby is, made perpetual.

IV.

That the plaintiff have and recover from defendant all costs herein, together with any other further costs as may be hereafter incurred or taxed herein and that execution be issued therefor.

Done in open court this 27th day of Oct., 1928.

A. F. ST. SURE.

[Endorsed]: Filed Oct. 27, 1928. [19]

[Title of Court and Cause.]

STATEMENT OF EVIDENCE UNDER  
EQUITY RULE No. 75.

BE IT REMEMBERED, that this cause came on regularly for hearing before the Court sitting in equity on the 17th day of May, 1928, upon the bill of complaint and the answer of the defendant, Marble E. Burch. The following is all the evidence introduced and received by the Court and the proceedings had in said case:

COMPLAINANT'S CASE.

The complainant put in evidence a certified copy of the original map upon which defendant's patent is based—Exhibit No. 1. A certified copy of the field-notes of Sandow, the surveyor who made the map, and which map was made from his field-notes—Exhibit No. 2.

DEFENDANT'S CASE.

The defendant put in evidence the patent from the United States to Mr. Cooper by introducing a certified copy thereof—Defendant's Exhibit "A." The deed from John F. Cooper and Abbie Cooper to Marble E. Burch, defendant herein—Defendant's Exhibit "B." Map made by witness Bragt, a surveyor—Defendant's Exhibit "C."

The above and foregoing is all the evidence introduced at the trial of the case and all proceedings

had in the trial thereof, and the following is all the evidenced introduced by the complainant in support of his bill of complaint, viz.: [20]

TESTIMONY OF W. G. DURBIN, FOR  
PLAINTIFF.

W. G. DURBIN, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

I am the forest supervisor of the Lassen National Forest. (Witness shown map.) That is a map of the recreational land laid out around Sylvan Lake by the Forest Service; that is in Township Thirty (30), Range Seven (7) and 31-7. The Government wishes to build a road around there, that is going from a point where the county road is built from the valley to the lake and then extending around in a southerly direction around the East side of Sylvan Lake. The map which was handed to me a moment ago is a recent map.

TESTIMONY OF JOHN C. INGE, FOR  
PLAINTIFF.

JOHN C. INGE, a witness on behalf of the plaintiff, being duly sworn, testified as follows:

I am Registrar of the United States Land Office, Sacramento, California. (Witness shown Government Exhibit 1.) That is a copy of the survey of Township Thirty (30) North, Range Seven (7) East, and the plan was approved July 11, 1883. It was made by the United States Surveyor-general, San Francisco, California—W. H. Brown. It is a

(Testimony of John C. Inge.)

copy of an official Government map. Patents of land in Lassen Park were granted in reference to that map and a patent contains a reference to that plat and survey as recommended to the General Land Office by the United States Surveyor-general. Section 2 of Township 30 North, Range 7 East, M. D. B. & M., according to the tract books of the United States Land Office, is within the Lassen National Forest and the records show that to be within the Lassen National Forest. This is the tract book, the official tract book of Township 30 North, Range 7 East, M. D. M., and shows the land was withdrawn November 22, 1902, and made permanent June 2, 1905. It is within the Lassen National Forest according to the map. The tract book is a part of the records of the United States Land Office in Sacramento. Page 121 is before me and so far as Section 2 is concerned there is nothing to read into the record [21] except that it is all forest lands and there are no entries under Section 2. This is the record of the former Susanville office. I do not know when it was completed. The original notations were made on this book. (Certified copy of field-notes of Sandow offered in evidence and were received and marked Government Exhibit No. 2.)

The *foregoing* is all the evidence introduced at the trial of the case by the defendant, Marble E. Burch:

TESTIMONY OF MARBLE E. BURCH, IN  
HIS OWN BEHALF.

MARBLE E. BURCH, the defendant, testified as follows:

I am the defendant in this matter and reside at Sylvan Lake in summer-time and in Chico in winter-time. I am familiar with Lots Nos. 1 and 2, Section 30—I should say lots 3 and 4 in the South half of the Northwest Quarter of Section 1, Township 30 North, Range 7 East, M. D. & M. This instrument is the original from which my deed was issued to me when I bought the land and this is a copy of my deed from Cooper to myself, the people from whom I bought the land, George Cooper and Abbie Cooper, his wife, and when I said deed, I meant patent. (Patent marked Defendant's Exhibit "A" and deed marked Defendant's Exhibit "B.") I raised stock and the northwest corner of my land is right on the Lake and the Government proposed to build a road between my lot and the Lake. The corner was supposed to be a lost corner and we just kind of calculated, and we don't know just where we are at yet so far as my survey, and my fence is over on Section 1 at the present time, and my fence with reference to Sylvan Lake is on the east and west line to the proportionate corner that my surveyor has set in the Lake and the fence is between the lines now and is right on the true line.

(Testimony of Marble E. Burch.)

The fence is on the east and west line as near as I could build it. I purchased this land from John Cooper and he is the same man referred to in this patent from the United States. Mr. Cooper is dead, and he died some time in the summer of 1924. I built the fence the same year I bought the land and I built the fence on the east and west as near as I could to the corner that [22] Mr. Cooper had described, only I figured I kept on my side of the line and did not go on the Government land. When I bought the land I went to Mr. Cooper and asked him where the corner was—that corner on the Lake and he told me as near as he could to go to the outlet of the Lake and step ninety steps from the Lake and at a big fir snag that stood there and he told me that I could not miss it, that corner was practically on an old road. It is there; it has been well established and I would find the corner somewhere near that, within just a few feet between the outlet and this old snag and Mr. Cooper told me he had not been up there for several years; this old snag was probably burned down, it being the only hole left there with old fir roots in it and I found two stumps that correspond very well with the field-notes, where it looked as though somebody had cut the witness tree down and I took that to be the corner and that is what I took to be my corner and it is well identified there to be by Mr. Cooper as I had the Lake edge and the amount of steps and the road to work upon and had the field-notes which Mr. Durbin sent me.



(Testimony of Marble E. Burch.)

I checked with those field-notes, and they checked very close, starting at the corner of thirty-five and thirty-six, in the other Township, this being a standard parallel line, and I started in and it says this runs twenty-one chains and fifteen links to Sylvan Lake and the field notes read twenty chains and ninety-five links across a trail course, and on following this I followed an old blazed line that is there, and is there to-day, and it corresponded at twenty chains and seventy-five links. I crossed this old road, and at twenty-one chains and sixty-five links—he said he established a corner of these field-notes at twenty-one chains and fifteen links, whereupon on my running the line right there is right close to where I found the two old stumps, and there is a pile of rocks there, but, however, there is nothing left on them, any other trees there, or any rocks, with [23] any marks on them whatever, to identify that corner, and no other place there could I find a corner. Well, Mr. Cooper, told me as soon as he got well he would come up and show me where it was, and Mr. Cooper died, and therefore he never showed me exactly.

Mr. Cooper never did point out the corner on the ground to me. This stump I have testified to is practically right on the end of the neck of the Lake. It would be east-northeast, out on the land and from Mr. Seebecker's corner practically to the end of the fence—practically north of it.

I built a fence from about 200 *years* from the lake on the east and west line and after I built

(Testimony of Marble E. Burch.)

the fence a dispute arose between the forest service and me as to my line being between two known corners, and I checked that and found that my fence wasn't on the line according to those two corners. I was over the line a little, so I moved the fence back onto the line between thirty-five and thirty-six, the corner thirty-five and thirty-six and the quarter corner on the thirty-five on the south side. I run cattle and have lived in this vicinity since the spring of 1924 and use it as a summer home. Down in from the lake, maybe 500 yards, the lake was meandered, a fence around the lake there or swamp there; it is partly swamp and lake. I did not follow the line of the old fence. The old fence is quite a bit in the middle, just about 80 acres. Sixty acres fenced in of the 160 acres I bought and I ran a fence from it out to the line within 200 yards of Sylvan Lake, then I turned and ran straight to Sylvan Lake on that line as near as I could. It is fenced right up to the Lake and into the Lake a little bit. Cooper and his boys built the old fence. Cooper's land was not entirely fenced only about 60 acres in the middle and he just ran a fence around a meadow practically in the middle of this square and I bought 159.22 acres.

The Government made a demand on me in 1926 to take these fences down. It may have been in 1925. [24]

I have had experience in surveying, quite a little on retracing. I have been familiar with surveying for twenty years and know how to run courses and

(Testimony of Marble E. Burch.)

I have a general knowledge of surveying. I have been doing surveying quite a little for twenty years. This fence is on a true line between thirty-five and thirty-six and the quarter corner on the south side of thirty-five. It is on a line with Mr. Seebecker's survey and my lines correspond with his and I ran the line with fore and back sight with a compass. I did not step off ninety paces on getting that line. I just got a true line but when I marked my distance up there I measured that correctly and I think my measurements will check with all the others. I was guided by field-notes the same as our other copy.

I was not educated in surveying; what education I got I picked from the fields. I surveyed for Mr. Sam Stevens; also for Jim Stevens and *may* others there. I can use a transit but I did not use a transit because I was tracing corners. All I did was to retrace corners and give me a line. These field-notes are divided into two sections.

TESTIMONY OF ARTHUR BRAGT, FOR  
DEFENDANT.

ARTHUR BRAGT, a witness for the defendant, testified as follows:

I reside at Chico, California, and at the present time I am engaged in the mercantile business. I have a florist shop. My past occupation in business has been engineering work. I have been a surveyor for more than forty years. I was employed

(Testimony of Arthur Bragt.)

by Mr. Burch to make a survey of his property in Section 1, Township Thirty (30) North, Range Seven (7) East, known and which will be referred to as the property adjacent to Sylvan Lake. I used a certified copy of the field-notes of Mr. Sandow of the sixth standard parallel north. I also used a certified copy of the map of that township and I checked the courses and distances as given on that map with the field-notes here. [25]

In the first section of the field-notes reference is made to Sylvan Lake by a random line that runs west from the corner of sections thirty-five and thirty-six south on a random line. The first section of the notes ran on the sixth standard parallel or the subdivision of section one. In the other set of notes, subdivision of section one, the location of Sylvan Lake is not given. In the first section it gives the distances across the lake. The east and west line on his random line of Sixth Standard Parallel, that is, in retracing the Sixth Standard Parallel he runs a random line westward across Sylvan Lake and described as the distance across it by subtraction from the two distances together.

From my survey I prepared a larger map showing this section. I prepared the map from my own survey in the field and from Sandow's field-notes. I checked the Sandow field-notes on the ground itself in June, 1926, and this map correctly expresses the position of the Sandow line, and in addition to that it shows the position of their line and the map is drawn to a scale and shows the pat-

(Testimony of Arthur Bragt.)

ented land of Mr. Burch and this map comprises the south half of the northwest quarter of lots three (3) and four (4) of Section One (1). (Map received in evidence and marked Defendant's Exhibit "C.") In connection with this map Exhibit "C" the dotted line leading from the corner of Sections thirty-five and thirty-six due west is the line described in Sandow's field-notes.

Running west from the common corner of thirty-five and thirty-six as identified by Mr. Sandow the distance of thirty-nine chains and sixteen links to a point north of the quarter-section corner that he found. It runs north a chain and forty-two links. The random line intersects Sylvan Lake according to Mr. Sandow's note—the east bank of Sylvan Lake 22.65. [26]

I have a common corner of sections one and two—eleven and twelve marked on the map and the dotted line running north to the point marked with a circle is the location of a stone that is said to be the quarter corner of the west line of section one. I have a red line drawn to the right of that going in the northerly direction up to a point marked "Seebecker's Closing Corner." That is a line drawn from the field-notes of Mr. Carl Seebecker, who made the survey of this land in 1925. To the left or west is a line that may be drawn north to coincide with the closing corner as located by Sandow. We started out on a needle bearing taking the field-notes as given and went on a needle bearing and ran a traverse line, triangulating

(Testimony of Arthur Bragt.)

across Sylvan Lake and calculated the true course and distances between. Allowing for the variation I ran direct to the corner and ran what is called a true traverse. Our last course was direct to the corner and a true line between, figured from the traverse. It figured 79.3, which was the quarter corner of Section 35. I did not run the line according to the field-notes from the common corner of Section 35, the closing corners to Sections 1 and 2. I ran a line from a proportionate distance between the section corner and the quarter corner, and connected up with the quarter corner on the west line of Section 2. We searched diligently for the corner referred to by Mr. Sandow as being the corners of Sections 1 and 2 of Township 30 North, Range 7 East. I did not find one except to the one set in Sylvan Lake and referring to the Sandow notes we found no corner whatever, no closing corner or conclusive evidence of one. It has been my experience in establishing a lost corner to be bound by certain rules and regulations and the General Land Office of the United States puts out rules and regulations governing the making of resurveys and at any time there has been a resurvey made it is according to the rules and regulations of the General Land Office. There is [27] a rule of the General Land Office governing the restoration of lost or obliterated corners and those are the ones I have always followed in my practice and in making this survey I followed these rules and regulations and placed the corner of Sec-

(Testimony of Arthur Bragt.)

tions 1 and 2, twenty-one (21) chains and fifty (50) links on a line between the two corners and derived that point by the proportionate distance between the field-notes distance and the actual distance on the ground. There was some variation between the two distances. Reading on page 2, certified copy of Sandow's survey, from the south boundary line of Section 35, variation  $17^{\circ} 30'$  east, the trail course is there. There is a road there. I struck the east bank of Sylvan Lake at a point between the two corners. It was approximately 21.15 chains. I noticed a bearing tree  $42^{\circ}$  east to distance marked. When Sandow started this line and on up, according to his notes, to a point one hundred fifty-two (152) links north of the quarter-section corner, he was on a random line. The course of this gravelled trail is directly south  $87^{\circ} 47'$ , and in the surveyor's language it means that it has varied from the west line by the difference between  $90^{\circ}$  and  $87^{\circ} 47'$ , or  $2^{\circ} 3'$  on the west line, and that is his corrected notes as delineated on his map but not in his field-notes. When I refer to the map I refer to Exhibit 1, accompanying his field-notes, and I had a copy of it.

Burch's land on the map is the quarter-section corner right here and it was all Government land before the patent was issued. The contention is that there is a lost corner there and the re-establishment of that is what is governing in this case. I said that Sandow delineates that course on his map but does not give it correctly in his field-notes.

(Testimony of Arthur Bragt.)

The COURT.—Do you mean to say the map is incorrect?

Answer.—No. [28]

I followed the plat in determining the courses. There is no evidence of any correction as to distance. He assumes the same distance on that line that departs  $2^{\circ} 3'$  on from the line he started, and there is not a corresponding correction of distance and the line would be about three links longer than the thirty-nine (39) chains, fifteen (15) links. I found a stone referred to by the field-notes of *bus*division one. In running the survey line west from the common section of thirty-five (35) and thirty-six (36) and north from the quarter-section corner and running the field-notes and taking into consideration the map or plat, I located that corner at a point twenty-one (21) chains fifty (50) links west or southwest or a little south of west of the section corner and pointing it out on the map it is a point twenty-one (21) chains fifty (50) links along this line, the red line, that is the line between the two points along that line and 36.39 from this corner. That is the closing corner and the proportionate distance and the closing corner that I found on the ground. The red line is plated according to Seebecker's notes and the dotted line between the red and blue line is my line. The heavy line is the line projecting north from this quarter corner; taking it that he had made a mistake and he came north from there, assuming he did, that would be where it would throw out to.



(Testimony of Arthur Bragt.)

That particular corner is an iron stake and represents the closing corner of 1 and 2 according to my survey and that corner, with reference to Sylvan Lake, is out in the lake about thirty-five (35) links, and this line that runs south from that corner to the quarter section corner between 1 and 2 intersects the lake. It runs through the water there for a distance of two or three hundred feet. I made this location by the proportionate distance in proportion to the field-notes distance has to the actual distance, and it is derived by ratio. As the field-notes distance bears to the actual distance between, right to this—any part of that line, the field-notes distance for any part of that line bear to the actual distance. I first took into consideration the distance [29] between the section corner and a quarter-section corner of 34 and the quarter-section corner of 35, and the second distance, thirty-nine (39) chains, fifteen (15) links was the distance given in the field-notes, from the section corner of 35 to the quarter-section corner of 35. The third distance I took 31.15 is the closing distance in the field-notes and working that out in a ratio I wanted to find the proportionate measurement of the line between 35 to the closing corner of section 1, and working that out in a ratio that distance was twenty-one (21) chains and fifty (50) links.

The COURT.—According to this Exhibit 1, Sylvan Lake is not in Section One (1), is it?

(Testimony of Arthur Bragt.)

WITNESS.—We refuse to stipulate that it was.

The COURT.—I say it is not in there according to the map.

Answer.—No.

The COURT.—There is a reference to the map in your patent.

WITNESS.—Yes, sir.

The COURT.—You do not accept this plat as correct, do you?

WITNESS.—No, sir.

The COURT.—So far as this Court is concerned it is decisive of this case, it seems to me. There isn't any lost corner in there?

WITNESS.—There is a corner post there, but there is no—

The COURT.—According to this plat there is a corner.

WITNESS.—Yes, sir.

The COURT.—You say this map is wrong, Exhibit 1?

WITNESS.—By the field-notes, it is.

The COURT.—You say that is your conclusion.

[30]

WITNESS.—An analysis of the field-notes shows it does not conform to the field-notes.

The COURT.—You must locate them according to this plat.

WITNESS.—That is what we are trying to do.

The COURT.—You are not doing it.

WITNESS.—Giving the courses and distances as

stated on the map I could run a line just like the one on the map.

Dated: September 27, 1929.

HUSTON, HUSTON & HUSTON,  
PERCY NAPTON,

Attorneys for Defendant and Appellant.

It is hereby stipulated that the above and foregoing statement of evidence is true and correct and may be approved by the Judge without notice.

\_\_\_\_\_,  
Attorney for Plaintiff. [31]

The above and foregoing is a full, true and correct copy of the evidence admitted at the trial of said suit.

Dated: \_\_\_\_\_, 1929.

\_\_\_\_\_,  
Judge.

Due service hereby by copy admitted on this 27th day of Sept., 1929.

ALBERT E. SHEETS,  
D.,  
Attorney for Plaintiff.

[Endorsed]: Filed Sept. 27, 1929. [32]

\_\_\_\_\_  
[Title of Court and Cause.]

PETITION FOR APPEAL.

To the Hon. A. F. ST. SURE, United States District Judge of the Northern Division of the Northern District of California.

The above-named defendant Marble E. Burch feeling himself aggrieved by the decree made and entered in this cause on the 27th day of October, 1928, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of error which is filed herewith and he prays that his appeal be allowed and that citation issue as provided by law and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to said United States Circuit Court of Appeals, Ninth Circuit, sitting at the City of San Francisco, County of San Francisco, State of California, and your petitioner further prays that the proper order touching the security to be required by him to perfect his appeal be made.

HUSTON, HUSTON and HUSTON,  
Solicitors for Appellant and Defendant. [33]

Service of the within petition by copy admitted this 25 day of Jan., 1929.

ALBERT E. SHEETS,  
D.,  
Attorney for Pltff.

[Endorsed]: Filed Jan. 25, 1929. [34]

[Title of Court and Cause.]

### ASSIGNMENT OF ERRORS.

Now comes the defendant in the above-entitled cause and files the following assignment of errors upon which he will rely upon his prosecution of the appeal in the above-entitled cause from the decree made by this Honorable Court on the 27th day of October, 1928.

#### I.

That the United States District Court in the Northern Division, Northern District of California, erred in overruling the motion of defendant and appellant that judgment be entered for defendant upon the ground that the plaintiff failed to prove the allegations of its bill of complaint.

Defendant's motion for judgment is as follows:

Mr. NAPTON.—At this time we ask that judgment be entered for defendant for the reason that they have not proven the allegations in their complaint. The burden in this case is upon the Government and I believe that on the pleadings the issue is whether or not this man's fence is upon the public domain or is upon land of the forest reserve, and the evidence does not show it at this time. I think there is a total failure of proof.

The COURT.—That is the only evidence before the Court right now. They say it is upon Government land. Motion denied.

Mr. NAPTON.—Exception. [35]

The following is all the evidence introduced by plaintiff in support of its bill of complaint.

W. G. DURBIN, a witness called upon behalf of the plaintiff, being duly sworn testified as follows:

I am the forest supervisor of the Lassen National Forest (witness shown map). That is a map of the recreational land laid out around Sylvan Lake by the Forest Service; that is in Township Thirty (30), Range Seven (7) and 31-7. The Government wishes to build a road around there; that is going from a point where the county road is built from the valley to the lake and then extending around in a southerly direction around the East side of Sylvan Lake. The map which was handed to me a moment ago is a recent map.

JOHN C. INGE, a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

I am Registrar of the United States Land Office, Sacramento, California. (Witness shown Government Exhibit 1.) That is a copy of the survey of Township Thirty (30) North, Range Seven (7) East, and the plan was approved July 11, 1883. It was made by the United States Surveyor-general, San Francisco, California—W. H. Brown. It is a copy of an official Government map. Patents of land in Lassen Park were granted in reference to that map and a patent contains a reference to that plat and survey as recommended to the General Land Office by the United States Surveyor-general.

Section 2 of township 30 North, Range 7 East, M. D. B. & M., according to the tract books of the United States Land Office, is within the Lassen National Forest and the records show that to be within the Lassen National Forest. This is the tract book, the official tract book of Township 30 North, Range 7 East, M. D. M., and shows the land was withdrawn November 22, 1902, and made permanent June 2, 1905. It is within the Lassen National Forest according to the map. The tract book is a part of the records of the United States Land office in Sacramento. Page 121 is before me and [36] so far as Section 2 is concerned there is nothing to read into the record except that it is all forest lands and there is no entries *except that it is all forest lands and there are no entries* under Section 2. This is the record of the former Susanville office. I do not know when it was completed. The original notations were made on this book. (Certified copy of field-notes of Sandow offered in evidence and were received and marked Government Exhibit No. 2.)

## II.

There is no evidence to justify and support Findings Nos. 5, 6 and 7 in that the Court assumed as a matter of law that for the purposes of this suit the official plat, Plaintiff's Exhibit No. 1, was conclusive against the defendant in fixing and determining the boundaries of his land to the exclusion of the field-notes, Plaintiff's Exhibit No. 2, of the original survey upon which said plat was based.

## III.

That the said map is erroneous as to the true location of Sylvan Lake.

## IV.

The undisputed evidence respecting the boundaries of defendant's land discloses *at* the northwest corner of his land was lost and that there is a variance between two established corners of the original survey upon which defendant's patent is based and said map.

## V.

That in the *instance* case it was the duty of the Court in fixing and determining the northwest corner of defendant's land to abide by the proportionate measurement as provided for and prescribed by the rules of survey of the Department of Interior General Land Office.

The following is all the evidence in support of the above findings.

MARBLE E. BURCH, defendant, testified as follows: I am the defendant in this matter and reside at Sylvan Lake in summer-time and [37] in Chico in winter-time. I am familiar with lots Nos. 1 and 2, Section 30—I should say lots 3 and 4 in the South half of the northwest quarter of Section 1, Township 30 North, Range 7 East, M. D. & M. This instrument is the original from which my deed was issued to me when I bought the land and that is a copy of my deed from Cooper to myself, the people from whom I bought the land, George Cooper and Abbie Cooper, his wife, and



when I said deed, I meant patent. (Patent marked Defendant's Exhibit "A" and deed marked Defendant's Exhibit "B.") I raised stock and the northwest corner of my land is right on the Lake and the Government purposes to build a road between my lot and the Lake. The corner was supposed to be a lost corner and we just kind of calculated and we don't know just where we are at yet so far as my survey, and my fence is over on Section 1 at the present time, and my fence with reference to Sylvan Lake is on the east and west line to the proportionate corner that my surveyor has set in the Lake and the fence is between the lanes now and is right on the true line.

The fence is on the east and west line as near as I could build it. I purchased this land from John Cooper and he is the same man referred to in this patent from the United States. Mr. Cooper is dead, and he died some time in the summer of 1924. I built the fence the same year I bought the land and I built the fence on the east and west as near as I could to the corner that Mr. Cooper had described, only I figured I kept on my side of the line and did not go on the Government land. When I bought the land I went to Mr. Cooper and asked him where the corner was—that corner on the Lake, and he told me as near as he could to go to the outlet of the Lake and step ninety steps from the Lake and at a big fir snag that stood there and he told me that I could not miss it, that corner was practically on an old road. It is there; it has been well established and I would find the [38] corner

somewhere near that, within just a few feet between the outlet and this old snag, and Mr. Cooper told me he had not been up there for several years; this old snag was probably burned down, it being the only hole left there with old fir roots in it and I found two stumps that correspond very well with the field-notes, where it looked as though somebody had cut the witness tree down and I took that to be the corner, and that is what I took to be my corner and it is well identified there to be by Mr. Cooper as I had the Lake edge and the amount of steps and the road to work upon and had the field-notes which Mr. Durbin sent me.

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Mr. Cooper never did point out the corner on the ground to me. This stump I have testified to is practically right on the end of the neck of the Lake. It would be east—northeast out on the land and from Mr. Seebecker's corner practically to the end of the fence—practically north of it. [39]

I built a fence from about 200 yards from the Lake on the east and west line and after I built the fence a dispute arose between the forest service and me as to my line being between two known corners and I checked that and found that my fence wasn't on the line according to those two corners. I was over the line a little so I moved the fence back on to the line between thirty-five and thirty-six, the corner thirty-five on the south side. I run cattle and have lived in this vicinity since the spring of 1924 and use it as a summer home. Down in from the lake, maybe 500 yards; the lake was meandered, a fence around the lake there or swamp there; it is partly swamp and lake. I did not follow the line of the old fence. The old fence is quite a bit in the middle; just about 80 acres. Sixty acres fenced in of the 160 acres I bought and I ran a fence from it out to the line within 200 yards of Sylvan Lake, then I turned and ran straight to Sylvan Lake on that line as near as I could. It is fenced right up to the Lake and into

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In the first section of the field-notes reference is made to Sylvan Lake by a random line that runs west from the corner of sections thirty-five and thirty-six south on a random line. The first section of the notes ran on the sixth standard parallel or the subdivision of section one. In the other set of notes subdivision of section one the location of Sylvan Lake is not given. In the first section it gives the distance across the Lake. The east and west line on his random line of sixth standard parallel; that is, in retracing the sixth standard parallel he runs a random line westward across Sylvan Lake and described as the distance across it by subtraction from the two distances together.

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Running west from the common corner of thirty-five and thirty-six as identified by Mr. Sandow the distance of thirty-nine chains and sixteen links to a point north of the quarter-section corner that he found. It runs north a chain and fifty-two links. The random line intersects Sylvan Lake according to Mr. Sandow's note—the east bank of Sylvan Lake 22.65.

I have a common corner of sections one and two—eleven and twelve marked on the map and the dotted line running north to the point marked with a circle is the location of a stone that is said to be the quarter corner on the west line of section one. I have a red line drawn to the right of that going in the northerly direction up to a point marked "Seebecker's Closing Corner." That is a line

drawn from the field-notes of Mr. Carl Seebecker who made the survey of this land in 1925. To the left or west is a line that may be drawn north to coincide with the closing corner as located by Sandow. We started out on a needle bearing taking the field-notes as given and went on a needle bearing and ran a traverse line, triangulating across Sylvan Lake and calculated the true course and distances between. Allowing for the variation I ran direct to the corner and ran what is called a true traverse. Our last course was direct to [42] the corner and a true line between, figured from the traverse. It figured 79.3 which was the quarter corner of Section 35. I did not run the line according to the field-notes from the common corner of Section 35, the closing corners to Sections 1 and 2. I ran a line from a proportionate distance between the section corner and the quarter corner, and connected up with the quarter corner on the west line of Section 2. We searched diligently for the corner referred to by Mr. Sandow as being the corners of Sections 1 and 2 of Township 30 North, Range 7 East. I did not find one except the one set in Sylvan Lake and referring to the Sandow notes we found no corner whatever, no closing corner or conclusive evidence of one. It has been my experience in establishing a lost corner to be bound by certain rules and regulations and the General Land Office of the United States puts out rules and regulations governing the making of resurveys and at any time there has been a resurvey made it is according to the rules and regulations

of the General Land Office. There is a rule of the General Land Office governing the restoration of lost or obliterated corners. There are various sections there that bear on the restoration of lost and obliterated corners and those are the ones I have always followed in my practice, and in making this survey I followed these rules and regulations and placed the corner of sections 1 and 2, twenty-one (21) chains and fifty (50) links on a line between the two corners and derived that point by the proportionate distance between the field-notes distance and the actual distance on the ground. There was some variation between the two distances. Reading on page 2, certified copy of Sandow's survey, from the south boundary line of section 35, variation  $17^{\circ} 30'$  east, the trail course is there. There is a road there. I struck the east bank of Sylvan Lake at a point between the two corners. It was approximately 21.15 chains. I noticed a bearing tree  $42^{\circ}$  east to distance marked. When Sandow started this line and on up, according to his notes, to a point one hundred fifty-two (152) links north of the quarter-section corner, he was on a random line. The course of this [43] gravelled trail is directly south  $87^{\circ} 47'$ , or  $2^{\circ} 3'$  on the west line and that is his corrected notes as delineated on his map but not in his field-notes. When I refer to the map I refer to Exhibit 1, accompanying his field-notes, and I had a copy of it.

Burch's land on the map is the quarter-section corner right here and it was all Government land



before the patent was issued. The contention is that there is a lost corner there and the re-establishment of that is what is governing in this case. I said that Sandow delineates that course on his map but does not give it correctly in his field-notes.

The COURT.—Do you mean to say the map is incorrect.

Answer.—No.

I followed the plat in determining the courses. There is no evidence of any correction as to distance. He assumes the same distance on that line that departs  $2^{\circ} 3'$  on from the line he started, and there is not a corresponding correction of distance and the line would be about three links longer than the thirty-nine (39) chains, fifteen (15) links. I found a stone referred to by the field-notes of subdivision one. In running the survey line west from the common section of thirty-five (35) and thirty-six (36) and north from the quarter-section corner and running the field-notes and taking into consideration the map or plat, I located that corner at a point twenty-one (21) chains fifty (50) links west or southwest or a little south of west of the section corner, and pointing it out on the map it is a point twenty-one (21) chains, fifty (50) links along this line, the red line; that is the line between the two points along that line and 36.39 from this corner. That is the closing corner and the proportionate distance and the closing corner that I found on the ground. The red line is plated according to Seebecker's notes and the dotted line between the red and blue line is my line. The heavy line is the line projecting north

from this quarter corner, taking it that he had made a mistake and he came north from there, assuming [44] he did, that would be where it would throw out to. That particular corner is an iron stake and represents the closing corner of 1 and 2 according to my survey and that corner, with reference to Sylvan Lake, is out in the lake about thirty-five (35) links, and this line that runs south from that corner to the quarter-section corner between 1 and 2 intersects the lake. It runs through the water there for a distance of two or three hundred feet. I made this location by the proportionate distance in proportion to the field-notes distance has to the actual distance, and it is derived by ratio. As the field-notes distance bears to the actual distance between, right to this—any part of that line, the field-notes distance for any part of that line bear to the actual distance. I first took into consideration the distance between the section corner and a quarter-section corner of 34 and the quarter-section corner of 35, and the second distance, thirty-nine (39) chains, fifteen (15) links, was the distance given in the field-notes, from the section corner of 35 to the quarter-section corner of 35. The third distance I took 31.15 is the closing distance in the field-notes and working that out in a ratio I wanted to find the proportionate measurement of the line between 35 to the closing corner of section 1, and working that out in a ratio that distance was twenty-one (21) chains and fifty (50) links.

The COURT.—According to this Exhibit 1 Sylvan Lake is not in Section one (1), is it?

WITNESS.—We refuse to stipulate that it was.

The COURT.—I say it is not in there according to the map.

Answer.—No.

The COURT.—There is a reference to the map in your patent.

WITNESS.—Yes, sir.

The COURT.—You do not accept this plat as correct, do you?

WITNESS.—No, sir.

The COURT.—So far as this Court is concerned it is decisive of this case, it seems to me. There isn't any lost corner in there? [45]

WITNESS.—There is a corner post there, but there is no—

The COURT.—According to this plat there is a corner.

WITNESS.—Yes, sir.

The COURT.—You say this map is wrong, Exhibit 1?

WITNESS.—By the field-notes, it is.

The COURT.—You say that is your conclusion.

WITNESS.—An analysis of the field-notes shows it does not conform to the field-notes.

The COURT.—You must locate them according to this plat.

WITNESS.—That is what we are trying to do.

The COURT.—You are not doing it.

WITNESS.—Giving the courses and distances as stated on the map I could run a line just like the one on the map.

Finding No. 5 reads as follows:

That the defendant, Marble E. Burch, has erected a fence and other improvements upon the Government land in Lot 1 of Section 2, Township 30 West, Range 7 East, M. D. M., between the east shore line of Silver Lake and the east section line of said Section 2 without permit or other authority from the complainant and has been and is now interfering with the construction of the aforesaid road.

Finding No. 6 reads as follows:

That the land of the defendant in the NW.1/4 of Section 1, Township 30 North, Range 7 East, M. D. M., does not touch the shore line or embrace any portion of Silver Lake.

Finding No. 7 reads as follows:

That the position of the section line between Sections 1 and 2, Township 30 North, Range 7 East, M. D. M., is as shown on the official plat of survey of said Township and Range approved July 11, 1883, on file in the United States Land Office at Sacramento, California, a copy [46] of said plat being a part of the evidence in this cause.

#### NOTICE OF MOTION AND MOTION.

To the Plaintiff Above Named and to Its Attorneys,  
GEORGE A. HATFIELD and ALBERT E.  
SHEETS:

You and each of you will please take notice that at the courtroom of the above-mentioned court in the Federal Building, Sacramento, California, on Monday, the 15th day of October, 1928, at the hour of ten o'clock A. M., or as soon thereafter as counsel may be heard, the defendant will move the Court to

adopt, sign and file special findings of fact in lieu of the special findings heretofore made, a copy of which proposed special findings on the part of the defendant having been heretofore served upon you.

Said motion will be made on the ground that the special findings of fact heretofore made are not supported by the evidence and are contrary to law. Said motion will be based upon the records, papers and files and upon the proposed special findings aforesaid.

HUSTON, HUSTON & HUSTON,  
Attorneys for Defendant.

The above motion was by the Court denied on the —— day of ———, 192—.

#### EXCEPTION TO SPECIAL FINDINGS OF FACT AND PROPOSED FINDINGS.

Now comes the defendant in the above-entitled action and excepts to the special findings of fact proposed by the plaintiff herein in that said findings of fact are not supported by any evidence and are contrary to law.

Defendant proposes the following special findings of fact and asks the Court to adopt, sign and file the same.

1. It is not true that the said defendant without permit or authority from the plaintiff, or the Secretary of Agriculture, or the District Forester, or without right or otherwise, or at all, has erected a fence upon and across the public domain described in Paragraph V of said complaint, or otherwise, or

at all, or that he has refused [47] or neglected to remove any fence erected on the public domain, but on the contrary the said fence referred to in said complaint is erected upon the lands of the said defendant; that said fence erected by said defendant on his own land does not now and never did obstruct or prevent the construction of any contemplated road over the public domain.

2. That at the time of the filing of the complaint, and at all times mentioned in the complaint and for a long time prior thereto, the defendant was and is the owner of, in possession of and entitled to the possession of Lots three (3) and four (4) and the South one-half (S.1/2) of the Northwest one-quarter (N. W.1/4) of Section One (1), Township Thirty (30) North, Range Seven (7) East, M. D. M., and that the West and North boundaries of defendant's land embraces a portion of Silver Lake in the manner hereinafter mentioned, and in accordance with and in conformity to an official plat or survey of said township and range approved July 1883, on file in the United States Land Office at Sacramento, California, and in accordance with and in conformity to the field-notes of the original survey made by George Sandow, Public Surveyor, and which said field-notes are not on file in the office of the Public Survey at San Francisco, California, viz.: Beginning at the Southwest corner of Section One, Township Thirty North, Range Seven East, M. D. M., and thence running North on true line between Sections One (1) and Two (2), variation 18° 20' E. at 23.00 chains. A small lake bears West 3 chains dis-

tant at 40.00 chains. Set a volcanic stone 16x7x6 inches marked one-quarter on W. face, ten inches deep for one-quarter section corner from which bears

Larch 12 ins. dia. N. 82° E. 57 lks.

Larch 11 ins. dia. N. 32° W. 52 lks.

Both marked  $\frac{1}{4}$  S. B. T.

78.85 chains intersect 6th Standard N. 21.15 chs. S. 87° 47' W. of corner to secs. 35, 36 T. 31 N. and set volcanic stone 15x14x8 ins. with 1 notch to E. and 5 to W. and marked C. C. on S., 10 ins. deep for closing corner to secs. 1, 2. [48]

3. It is not true that the lands enclosed by said fence and belonging to the said defendant have been or are now included within the boundaries of the Lassen National Forest, or any part thereof.

4. It is not true that defendant has erected a fence or any other improvements upon the Government land in Lot One (1) or Section Two (2), Township Thirty (30) North, Range Seven (7) East, M. D. M., between the East shore line of Silver Lake, and the East Section line of Section Two (2), without permit or authority from plaintiff, or otherwise or at all; it is not true that defendant has been or is now interfering with the construction of the road referred to in said complaint.

5. It is true that the land of the defendant in the Northwest one-quarter of Section One (1), Township Thirty (30) North, Range Seven (7) East, M. D. M., does touch the shore line and embrace a portion of Silver Lake; that the said fence heretofore constructed and now existing along the

shore line of said Silver Lake by said defendant was and is the true boundary line between the lands of the said defendant and the plaintiff.

6. That all of the lands now in the possession of said defendant and inclosed by said fence is owned by and is in the possession of said defendant and is not a part of the public domain and the said plaintiff has no right, title or interest therein.

### CONCLUSIONS OF LAW.

The Court deduces the following conclusions of law from the foregoing findings of fact:

#### I.

That the plaintiff is entitled to take nothing by said complaint, and defendant is entitled to recover his costs herein.

#### II.

That the defendant was at the time of the filing of this complaint, and for a long time prior thereto and now is the owner of and in possession of the real property hereinbefore described.

Dated: \_\_\_\_\_, 1928.

\_\_\_\_\_,  
Judge. [49]

The exceptions to the special findings of fact and proposed findings on part of defendant bears the following endorsement: "Exceptions overruled—proposed findings disallowed.—A. F. St. Sure, D. J."

HUSTON, HUSTON and HUSTON,  
Solicitors for Defendant and Appellant.



Service of the within assignment of errors by copy admitted this 25 day of January, 1929.

ALBERT E. SHEETS,  
Attorney for Pltff.

[Endorsed]: Filed Jan. 25, 1929. [50]

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[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

The above-named defendant having on the 25th day of January, 1929, filed with the Clerk of the above-mentioned court his, defendant's, petition for appeal and praying therein that his appeal be allowed and that citation issue as provided by law and that a transcript of the records, proceedings and papers upon which the decree was based duly authenticated be sent to the United States Circuit Court of Appeals *of* the Ninth Circuit sitting at San Francisco, and that the proper order be made touching the security to be required to defendant of his appeal and required of him to perfect his appeal,—

NOW, THEREFORE, IT IS ORDERED AND DECREED that the petition of defendant praying that his appeal be allowed is this day granted and the appeal allowed upon defendant giving bond, condition as required by law in the sum of \$300.00.

A. F. ST. SURE,  
Judge.

Service admitted by receipt of copy Sept. 12, 1929.

ALBERT E. SHEETS,

D.,

Atty. for Pltff.

[Endorsed]: Filed Sept. 14, 1929. [51]

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THE CENTURY INDEMNITY COMPANY,  
Hartford, Connecticut.

KNOW ALL MEN BY THESE PRESENTS:

[Title of Court and Cause.]

UNDERTAKING ON APPEAL.

WHEREAS, lately at a regular term of the District Court of the United States for the Northern Division of the Northern District of California, sitting at Sacramento, California, in said District, in a suit pending in said court between the United States of America as plaintiff and Marble E. Burch as defendant, cause No. 253 in Equity, a final judgment was rendered and a decree had against the said defendant that the plaintiff was the owner of, entitled to the possession and occupancy of the land described in the bill of complaint situate in Section Two, Township Thirty North, Range Seven East, M. D. B. & M., and that the defendant is without any estate, right, title or interest in the above described land and that the defendant be forever enjoined and debarred from asserting any claim whatever in or to said land and that defendant be enjoined from maintaining a fence mentioned in

the bill of complaint or any other obstruction or improvement now existing on said land and that the defendant be enjoined from in any manner obstructing or interfering with the construction and completion of the road mentioned in the bill of complaint and that the plaintiff have and recover from the defendant all costs herein or therein and [52] that execution be issued therefor, and

WHEREAS the defendant filed a petition in said District Court praying that his appeal be allowed and that citation issue as provided by law and that a transcript of the records, proceedings and papers upon which said judgment or decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals, Ninth Circuit, sitting at the City of San Francisco, State of California, and

WHEREAS, on the 12th day of September, 1929, the petition for appeal was by the Judge of said District Court allowed,—

NOW, THEREFORE, for and in consideration of the premises and the sum of Ten Dollars (\$10.00), receipt of which is hereby acknowledged, The Century Indemnity Company does hereby undertake and promise, and is here by these presents held and firmly bound unto the said plaintiff, its successors or assigns, to pay all damages and costs which may be awarded against the said appellant on the appeal, or on a dismissal thereof, not to exceed the sum of Three Hundred Dollars (\$300.00), to which amount The Century Indemnity Company does hereby acknowledge itself bound.

The condition of this obligation is such that if the appellant shall prosecute his said appeal to effect and answer all costs if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force and effect.

It is expressly agreed by the said Century Indemnity Company that in case of a breach of any condition hereof, the above-entitled court may, upon notice to the surety of not less than ten (10) days, proceed summarily in the above-entitled suit in which this undertaking is given, to ascertain the amount which the surety is bound to pay on account of such breach, and render judgment therefor against the surety and award execution therefor as provided and in accordance with the intent and meaning of Rule No. 34 of the Rules of Practice of the United States District Court in and for the Northern District of California. [53]

IN WITNESS WHEREOF, the Century Indemnity Company has hereunto attached its corporate seal and affixed its name by its duly authorized attorney-in-fact at Sacramento, California, this 13th day of September, 1929.

THE CENTURY INDEMNITY COMPANY.

[Seal]

By L. W. HERINGER,  
Attorney-in-fact.

L. W. HERINGER.

State of California,  
County of Sacramento,—ss.

On this 13th day of September, 1929, before me,  
Luda N. Cottle, a notary public in and for said

Sacramento County, residing therein duly commissioned and sworn, personally appeared L. W. Heringer, known to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of the Century Indemnity Company, and the said L. W. Heringer acknowledged to me that he subscribed the name of the Century Indemnity Company thereto as principal and his own name as attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City of Sacramento, County of Sacramento, the day and year in this certificate first above written.

LUDA N. COTTLE,

Notary Public in and for said Sacramento County,  
State of California. [54]

[Endorsed]: Approved, Sept. 13, 1929.

A. F. ST. SURE,

D. J.

Filed Sep. 14, 1929. [55]

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[Title of Court and Cause.]

MOTION TO DISMISS APPEAL.

Now comes the plaintiff and moves the Court to dismiss the appeal filed herein and for cause shows:

First. That said appeal was not allowed within six months from the filing of said final decree October 27, 1928.

Second. That no citation on appeal has been sued out nor served within six months from the filing of final decree October 27, 1928.

Third. That a transcript of the record has not been filed nor has the cause been docketed in the office of the Clerk of the Circuit Court of Appeals, Ninth Circuit.

Fourth. That no praecipe for transcript of record has been issued.

GEO. J. HATFIELD,  
United States Attorney,  
ALBERT E. SHEETS,  
Assistant United States Attorney,  
Attorneys for Plaintiff.

Receipt of the within — by copy admitted this 12th day of August, 1929.

HUSTON, HUSTON & HUSTON,  
Attorneys for Defendant.

[Endorsed]: Filed Aug. 12, 1929. [56]

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[Title of Court and Cause.]

#### NOTICE OF MOTION TO DISMISS.

To Marble E. Burch, the Defendant Above Named,  
and to Huston, Huston & Huston, Esqs., His  
Attorneys:

You will please take notice that the plaintiff in

the above-entitled action will on the 10th day of September, 1929, at 10 A. M. of said day or as soon thereafter as counsel can be heard, move the above-entitled court to call up and consider the motion to dismiss the appeal of the defendant in the above-entitled action.

That said motion will be made and based upon said motion and upon all of the records, papers, pleadings and files in said action.

Dated: August 12, 1929.

GEO. J. HATFIELD,  
United States Attorney,  
ALBERT E. SHEETS,  
Assistant United States Attorney,  
Attorneys for Plaintiff.

Due service of the within notice of motion to dismiss is hereby admitted this 12th day of August, 1929.

HUSTON, HUSTON & HUSTON,  
Attorneys for Defendant.

[Endorsed]: Filed Aug. 12, 1929. [57]

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[Title of Court and Cause.]

### ORDER TRANSFERRING EXHIBITS.

The defendant having on the 25th day of January, 1929, filed his petition appealing said suit to the United States Circuit Court of Appeals for the Ninth Circuit, and which petition was allowed on the 14th day of September, 1929, and the defendant

and appellant having given a bond on appeal, and which bond was approved on the 14th day of September, 1929,—

Now, therefore, on motion of Percy Napton and Huston, Huston & Huston, attorneys for defendant and appellant, the Clerk of the above-mentioned court is hereby directed to transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, the following exhibits:

1. Plaintiff's Exhibit No. 1—Certified copy of original map upon which defendant's patent is based.

2. Plaintiff's Exhibit No. 2—Certified copy of field-notes of Sandow, the surveyor who made the map.

3. Defendant's Exhibit "A"—Certified copy of patent from the United States to Mr. Cooper.

4. Defendant's Exhibit "B"—Deed from John F. Cooper and Abbie Cooper to Marble E. Burch.

5. Defendant's Exhibit "C"—Map made by witness Bragt, a surveyor.

Dated: October 2, 1929.

A. F. ST. SURE,  
Judge.

[Endorsed]: Filed Oct. 4, 1929. [58]



[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal allowed in the above-entitled cause, and to incorporate in such transcript of record:

1. Bill of complaint.
2. Answer to bill of complaint.
3. Final decree.
4. Defendant's motion to dismiss suit for failure of proof.
5. Ruling of Court on defendant's motion to dismiss suit.
6. Minutes of court of May 17, 1928.
7. Minute entry respecting the disposition of defendant's motion for dismissal.
8. Findings of fact and conclusions of law.
9. Exception to special findings.
10. Proposed findings on part of defendant.
11. Notice of motion and motion to adopt, sign and file special findings of fact on part of defendant in lieu of the special findings on part of plaintiff.
12. Ruling of Court on refusal of Court to adopt, sign and file special findings on part of defendant.

[59]

13. Minute entry respecting the disposition of defendant's motion to adopt, sign and file special findings of fact proposed by defendant.

14. Assignment of errors.
15. Petition for appeal.
16. Order allowing appeal.
17. Bond on appeal.
18. Citation on appeal.
19. Praecipe for transcript of record.
20. Statement of evidence.

21. Admission of service of statement of evidence and notice of lodgment of statement of evidence, and notice of time fixed for the approval of said statement, and also notice of filing of praecipe for transcript of record.

22. Order of Court transferring all exhibits to the United States Circuit Court of Appeals for the Ninth Circuit.

Said transcript to be prepared as required by law and the Rules of the United States Supreme Court and of the United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, and thereafter to be transmitted to said Circuit Court of Appeals in and for the Ninth Judicial Circuit of San Francisco, California, together with the original citation on appeal.

Dated: September 27, 1929.

HUSTON, HUSTON & HUSTON,  
PERCY NAPTON,

Attorneys for Defendant and Appellant.

Due service hereof by copy admitted on this 27th day of Sept., 1929.

ALBERT E. SHEETS,

D.,

Attorney for Plaintiff.

[Endorsed]: Filed Sep. 27, 1929. [60]

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[Title of Court and Cause.]

ADDITIONAL PRAECIPE FOR TRANSCRIPT  
OF RECORD.

To the Clerk of Said Court:

Sir: Please incorporate in the praecipe for transcript of record in the above-entitled cause, in addition to that requested by the defendant, the following:

1. Motion to dismiss appeal.
2. Notice of motion to dismiss appeal.

ALBERT E. SHEETS,

Assistant United States Attorney,

Attorney for Plaintiff.

Service of the within praecipe by receipt of copy thereof is admitted this 4th day of October, 1929.

HUSTON, HUSTON & HUSTON,

PERCY NAPTON,

Attorneys for Defendant.

[Endorsed]: Filed Oct. 4, 1929. [61]

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 61 pages, numbered from 1 to 61, inclusive, contain a full, true and correct transcript of certain records and proceedings in the case of United States of America vs. Marble E. Burch, No. 253—Equity, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipis for transcript on appeal, copies of which are embodied herein.

I further certify that the cost of preparing and certifying the foregoing transcript on appeal is the sum of Twenty-five and 85/100 (\$25.85) Dollars, and that the same has been paid to me by the attorneys for the appellant herein.

Annexed hereto is the original citation on appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 11th day of November, A. D. 1929.

[Seal]

WALTER B. MALING,  
Clerk.

By F. M. Lampert,  
Deputy Clerk. [62]

[Title of Court and Cause.]

CITATION.

United States of America to the Above-named Plaintiff and to Its Attorneys, GEORGE J. HATFIELD and ALBERT E. SHEETS:

You are hereby notified that in the above-entitled case in Equity in the Northern Division of the United States District Court for the Northern District of California, wherein the United States of America is complainant and Marble E. Burch is defendant, an appeal has been allowed the defendant, Marble E. Burch, to the United States Circuit Court of Appeals of the Ninth Circuit, sitting at the City of San Francisco, State of California, and you and each of you are hereby cited and admonished to be and appear in said court in the courtroom of the said District Court in the City of Sacramento, State of California, within thirty days (30) after the date of this citation, to show cause, if any there be, why the order and decree appealed from, should not be corrected and speedy justice done the parties in that behalf.

WITNESS, the Honorable A. F. ST. SURE, Judge of the United States District Court for the Northern Division and the Northern District of California, this the 13th day of September, 1929.

A. F. ST. SURE,  
Judge of the Northern Division of the United States District Court for the Northern District of California. [63]

Due service hereof by copy admitted on this 14 day of Sept., 1929.

ALBERT E. SHEETS,  
Attorney for Plaintiff.

[Endorsed]: Filed Sept. 14, 1929. [64]

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[Endorsed]: No. 5985. United States Circuit Court of Appeals for the Ninth Circuit. Marble E. Burch, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Northern Division.

Filed November 13, 1929.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.